IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 591 of 2000
in
SPECIAL CIVIL APPLICATION No 1799 of 1991
with
CIVIL APPLICATION No 8577 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATKUMAR RAMANLAL PATEL

Versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

Appearance:
1. LETTERS PATENT APPEAL No. 591 of 2000
MS AVANI S MEHTA for Appellant No.
MR BN PATEL for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. There were two vacant posts of Peons in the respondent No.1-Agricultural Produce Market Committee at Bayad. Advertisement was issued in local Gujarati newspaper "Sandesh" on 22.7.1986 inviting applications for the post of two Peons along with other posts. The applications were invited through the Employment Exchange. In pursuance of the advertisement, appellant-petitioner had also applied for the same and appeared before the Staff Selection Commission consisting of seven persons. One of them was his father, Mr.Ramanlal Patel. The said Selection Committee selected the appellant-petitioner and appointed on the post of Peon by an order dated 22.1.1987 on probation for a period of one year and joined duty on 24.1.1987. Later on he was made permanent with effect from 1.2.1988.

#. On 15.3.1991 the then Chairman of the respondent No.1 Committee informed him that they have received one letter from the Director of Agricultural Marketing and Rural Finance, State of Gujarat, respondent no.2 calling upon them to terminate his service with immediate effect and informed him about the same. However, he was not given copy of that letter. Therefore, he approached the respondent No.2 and obtained order dated 2/4.3.1991 and immediately approached this court by way of Special Civil Application No.1799 of 1991 before respondent No.1 terminate his service. It was admitted by learned Single Judge and by way of interim order, his services were protected. However, learned Single Judge of this court (Coram : S.K.Keshote, J.) by his judgment and order dated 3.6.2000 dismissed the writ petition and vacated interim relief. Hence, this Letters Patent Appeal.

#. On Civil Application filed in this appeal, stay was granted by the Division Bench of this court and under the interim orders of the court he remained in service. On 14.8.2003 this appeal was dismissed for default in absence of the advocate for the appellant. On Misc. Civil Application No.68 of 2003 filed in this appeal, it was restored at its original number. Meanwhile, his services were put to an end on 30.9.2003 by the respondent No.1 in view of the order dated 2/4.3.1991 passed by respondent No.2 as interim order granted in favour of the appellant came to be vacated on dismissal

of his Letters Patent Appeal, which was approved in the General Meeting of the Committee held on 3.10.2003.

#. On 10.10.2003 we had heard learned Senior Advocate, Mr.Vakharia for the appellant, Mr.Patel for respondent No.1 and learned AGP for respondent No.2. Mr.Vakharia conceded that initial appointment of the appellant was illegal because his father was one of the seven members of the Committee, which selected the appellant on the post of Peon. However, he had submitted that the initially his services were protected by the learned Single Judge in a writ petition filed in 1991 and even after the dismissal of the writ petition in 2000, the Division Bench of this court protected his services up to August, 2003. Thus, under the interim orders of the court, the appellant remained in service in all for a period of more than 16 years and now he would be age barred and will not get job anywhere, therefore, considering his long, unblemished service record of more than 16 years and that he was later on promoted from Class-IV post of Peon to Class-III post of clerk, respondent No.1 may consider his case of continuing him in service. Thereupon, Mr.B.N.Patel for respondent No.1 Committee submitted that if proper representation is made, then the same may be considered by them. Accordingly, the appellant was asked to make representation by 11th October and the respondent No.1 Committee was directed to take decision latest by 15th and inform about the same to this court on 16th i.e. today.

#. Accordingly, the appellant made the representation to the respondent No.1-Committee and the same was accepted by the Committee and they decided to continue his services keeping in mind long standing service of more then 16 years and his present age subject to the final decision of this court. The said resolution / decision dated 15.10.2003 passed by the respondents in its Special General Meeting is produced on record.

#. It is no doubt true that the selection of the appellant on the class IV post of Peon was illegal because his father was one of the seven members of the Selection Committee, who actively participated in the selection process. Therefore, no fault can be found with the impugned order passed by the respondent No.2 at Annexure-B on 2/4.3.1991 and the order passed by the learned Single Judge dismissing writ petition on 3.6.2000. If the petition filed by the appellant-petitioner was dismissed immediately after passing of the impugned order dated 2/4.3.1999, and if

this appeal was heard immediately and if there was no stay against his termination and that he had not remained in service for more than 16 years then this court would not have entertained in this appeal. However, the fact remains that after passing of the impugned order of termination there was a delay of more than 9 years in disposal of the main writ petition and further period of three years has passed after the dismissal of the writ petition, in hearing of this Letters Patent Appeal. Thus, for a period of not more than 12 years the appellant petitioner has remained in service under the interim order of the court and for a period of more than 4 years he remained in service after his appointment in 1987 till passing of the impugned order dated 2/4.3.1991. Thus, he remained in service for more than 16 years. His Initial appointment was on probation and later on he was confirmed on the post of Peon and because of his good past service record, he was even further promoted to Class-III post of Clerk and during his total service of more than 16 years there was nothing against him and his service record was good. It is also not in dispute that he has also come through employment exchange and selected after he was found successful in the interview. Considering all these aspects of the case and more particularly his long standing service of more than 16 years and his present age, when the respondent No.1 has now taken decision on 15.10.2003 to continue him in service, then we are of the considered opinion that the said decision should not be disturbed and he should be allowed to continue in service. Accordingly, this appeal is disposed of with no order as to costs.

#. Civil Application for interim relief stands disposed of as the main Letters Patent Appeal is allowed.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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